STATE OF MICHIGAN
IN THE SUPREME COURT

WEXFORD MEDICAL GROUP,	Supreme Court Case No. 127152
Petitioner-Appellant,	Court of Appeals Case No. 250197
v	Michigan Tax Tribunal Case No. 307906
CITY OF CADILLAC,	
Respondent-Appellee.	

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BRIEF OF MICHIGAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER-APPELLANT WEXFORD MEDICAL GROUP

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Petitioner-Appellant says "YES."

Amicus Curiae Michigan Association of Homes and Services for the Aging says "YES."

Respondent-Appellee says "NO."

The Court of Appeals and Michigan Tax Tribunal say "NO."

II. **SHOULD THE DECISIONS OF THE MICHIGAN TAX TRIBUNAL AND THE COURT OF APPEALS BE REVERSED BECAUSE THEY CONFLICT WITH THE PLAIN LANGUAGE OF THE CHARITABLE INSTITUTION EXEMPTIONS IN SECTIONS 7o AND 9(a) OF THE GENERAL PROPERTY TAX ACT, AND WITH DECISIONS OF THIS COURT BECAUSE THE COURT OF APPEALS AND TAX TRIBUNAL DECISIONS PRECLUDE NONPROFIT HEALTHCARE ORGANIZATIONS FROM QUALIFYING FOR THE CHARITABLE INSTITUTION EXEMPTIONS IF THEY RECEIVE COMPENSATION OR REIMBURSEMENT FOR THEIR SERVICES?**

Petitioner-Appellant says "YES."

Amicus Curiae Michigan Association of Homes and Services for the Aging says "YES."

Respondent-Appellee says "NO."

The Court of Appeals and Michigan Tax Tribunal say "NO."

III. **WHEN THE LEGISLATURE HAS NOT DONE SO, MAY THE MICHIGAN TAX TRIBUNAL OR COURT OF APPEALS IMPOSE A THRESHOLD LEVEL OF CHARITABLE CARE UNDER THE CHARITABLE INSTITUTION EXEMPTIONS IN GENERAL PROPERTY TAX ACT SECTIONS 7o AND 9(a)?**

Petitioner-Appellant says "NO."

Amicus Curiae Michigan Association of Homes and Services for the Aging says "NO."

Respondent-Appellee says "YES."

The Court of Appeals and Michigan Tax Tribunal say "YES."

IV. SHOULD THE DECISIONS OF THE MICHIGAN TAX TRIBUNAL AND THE COURT OF APPEALS BE REVERSED BECAUSE THEY CONFLICT WITH THE PLAIN LANGUAGE OF THE PUBLIC HEALTH EXEMPTION IN SECTION 7r OF THE GENERAL PROPERTY TAX ACT AND THE COURT OF APPEALS' *ROSE HILL* DECISION BECAUSE THE COURT OF APPEALS AND TAX TRIBUNAL DECISIONS DISQUALIFY FROM THE PUBLIC HEALTH EXEMPTION NONPROFIT HEALTHCARE ORGANIZATIONS THAT RECEIVE REIMBURSEMENT FOR SERVICES OR THAT DO NOT ESTABLISH THAT THEY ARE "ATYPICAL" FROM OTHER HEALTHCARE PROVIDERS?

Petitioner-Appellant says "YES."

Amicus Curiae Michigan Association of Homes and Services for the Aging says "YES."

Respondent-Appellee says "NO."

The Court of Appeals and Michigan Tax Tribunal say "NO."

V. SHOULD THE DECISIONS OF THE MICHIGAN TAX TRIBUNAL AND THE COURT OF APPEALS BE REVERSED BECAUSE THEY CONFLICT WITH THE PLAIN LANGUAGE OF THE PUBLIC HEALTH EXEMPTION IN SECTION 7r OF THE GENERAL PROPERTY TAX ACT AS WELL AS THE COURT OF APPEALS' *ROSE HILL* DECISION BECAUSE THE COURT OF APPEALS AND TAX TRIBUNAL DECISIONS DENY THE PUBLIC HEALTH EXEMPTION TO NONPROFIT HEALTHCARE PROVIDERS THAT PROTECT AND IMPROVE COMMUNITY HEALTH THROUGH PREVENTATIVE MEDICINE, HEALTH EDUCATION, COMMUNICABLE DISEASE CONTROL, AND THE APPLICATION OF THE SOCIAL AND SANITARY SCIENCES?

Petitioner-Appellant says "YES."

Amicus Curiae Michigan Association of Homes and Services for the Aging says "YES."

Respondent-Appellee says "NO."

The Court of Appeals and Michigan Tax Tribunal say "NO."

STATEMENT OF INTEREST

The Michigan Association of Homes and Services for the Aging ("MAHSA") is a nonprofit membership organization that represents nonprofit providers of health services for the elderly and disabled. MAHSA was established in 1968 and has approximately 198 nonprofit corporation members that individually or collectively provide a number of healthcare services to the elderly and disabled including: skilled nursing care, homes for the aged and assisted living services, home and community based services, life care, respite care, and hospice care. (Aff. ¶¶ 3, 5-7. The affidavit is attached hereto as **Attachment 1**.)

MAHSA's purpose is to establish a professional organization for administrators and managers of nonprofit agencies that serve the aging for the purpose of education, mutual stimulation, sharing of mutual problems, and improving the services to the aging in Michigan. Its mission is to serve its membership, consisting primarily of nonprofit providers of services to the aging, through advocacy, education, professional development, and other activities designed to improve the economic, political and social conditions in which they may carry out their missions. One of MAHSA's visions is to "be the association of choice for all nonprofit, long-term care and housing providers and . . . operate with a balance of revenue sources, funding and programs consistent with its mission." (Aff. ¶ 4.)

Virtually all MAHSA members are nonprofit, tax-exempt public charities under Section 501(c)(3) of the Internal Revenue Code. (Aff. ¶ 14.) Eight MAHSA members offer adult foster care; 44 members offer homes for the aged; 20 members offer unlicensed assisted living; 3 members offer home and community based services; 4 members offer hospice services; 13 members offer adult day care; 23 members offer

home care; and 56 members offer respite care. (Aff. ¶ 7.) Approximately 88 of MAHSA's members operate skilled nursing home facilities ("Member Facilities") in 38 different Michigan counties and serve some of Michigan's most fragile and vulnerable citizens. (Aff. ¶ 6.) Approximately 22 of MAHSA's Member Facilities are located in rural counties. The Member Facilities range in size from 19 beds to 231 beds, with a total number of approximately 9,400 beds devoted to skilled nursing care. (Aff. ¶ 6.)

All MAHSA Member Facilities are licensed, regulated and monitored by the Michigan Department of Community Health under the Michigan Public Health Code, 1978 PA 368. Pursuant to the Public Health Code, services are provided under the direction of licensed personnel. (Aff. ¶ 9.)

MAHSA Member Facilities provide 24-hour skilled nursing care to persons who are sick, infirm, and unable to care for themselves. They provide a host of healthcare services including bathing, skin care, routine healthcare, bladder irrigation or bowel training, impaction removal, observing and recording vital signs, catherization, feeding assistance, tube feeding, ambulation assistance, oxygen therapy, ulcer treatment, injections, colostomy, ureterostomy or iseostomy care, tracheotomy care, tracheal suctioning, respiratory care, dementia care, services to individuals at various stages of Alzheimer's disease, dressings and wound care, nutrition, physical, occupational, speech and recreational therapy, and a sophisticated pharmaceutical regimen. Under a physician's orders, medications are ordered from a pharmacy and dispensed and administered orally, by injection and/or through IV therapy by licensed personnel at the facilities. (Aff. ¶¶ 10 and 11.)

Except for one facility that is specifically dedicated to caring for Catholic nuns, MAHSA Member Facilities accept patients without regard to race, color, national origin, religion, martial status, sexual preference, or handicap. (Aff. ¶ 12.) Except for one facility that is private-pay only and the facility specifically dedicated to caring for Catholic nuns, MAHSA Member Facilities also accept Medicaid and/or Medicare patients. Approximately 77 Member Facilities accept both Medicaid and Medicare patients, approximately 4 Member Facilities accept Medicare patients only, and approximately 7 Member Facilities accept Medicaid only. (Aff. ¶ 13.)

Although some of the MAHSA Member Facilities are "stand alone" skilled nursing homes, many others are part of a larger healthcare system, including some that may have a religious affiliation (*e.g.*, Catholic healthcare system or Presbyterian-sponsored system of facilities). (Aff. ¶ 15.) Because they are nonprofit, MAHSA members do not disburse financial surpluses or net income to private persons or owners. Instead, any financial surplus or net income is used to support, improve, and further advance the charitable purposes or healthcare mission and services of the Member Facilities, and other programs and services offered to the public by MASHA members. (Aff. ¶ 16.) MAHSA members use any financial surplus they generate to enhance and improve the quality of care they provide by increasing the number of patient care hours furnished by staff to residents in MAHSA Member Facilities. Numerous private and governmental studies show a direct correlation between the number of patient care hours and the quality of care provided in the long-term care setting. In recognition of this relationship between staffing and quality of care, the Michigan Department of Community Health posts publicly available reports on staffing statistics for nursing homes licensed in

Michigan. For the period from April 2004 – March 2005, the Michigan Department of Community Health reported that staffing at nonprofit nursing homes, including MAHSA Member Facilities, was 3.71 patient care hours per day, while staffing at for-profit facilities was 3.22 patient care hours per day. (Aff. ¶ 17; *see also* Exhibit A to Affidavit.) This disparity in staffing ratios distinguishes nonprofit nursing home operators and demonstrates one way that any financial surplus at such facilities, including MAHSA Member Facilities, is re-directed into operations to the benefit of the public instead of being siphoned off to owners or shareholders as profit distributions.

The enhanced staffing and charitable operating practices of MAHSA members come at a cost, however. The operating margins of MAHSA Member Facilities are already thin, and a number of them have operated at a negative net income for several years.[1] (Aff. ¶ 18.) The evisceration of the exemptions that results from decisions of the Tax Tribunal and Court of Appeals ("the Rulings") would divert precious healthcare dollars that otherwise would be used by these organizations to support, maintain, or further charitable purposes and healthcare services by MAHSA members to the citizens of this State.

The majority of the Member Facilities' patients are admitted to the facilities directly from hospitals. (Aff. ¶ 20.) Member Facilities often provide the same first level of post-acute care after an inpatient hospitalization as do hospitals. By law, hospitals are obliged to ensure that upon discharge a hospital patient has a safe environment capable of providing services necessary and appropriate for the care and continued

[1] Indeed, approximately 16 nursing home facilities in Michigan have closed their doors or have been sold to for-profit organizations because of financial losses over the past 7 years. (Aff. ¶18.)

recovery of the patient. However, in may instances and particularly in certain areas of the State, there may be few alternatives to nursing home admission for many residents who (i) may not be clinically appropriate for home healthcare services because their needs are too acute; (ii) do not have an appropriate home care environment; (iii) do not have appropriate caregivers in a home setting; (iv) do not have any insurance coverage for home care services; or (v) do not have a home. The result is that nursing homes become a critical transitional and often permanent component of the continuum of care required by the public. (Aff. ¶ 22.)

If MAHSA Member Facilities did not exist, hospitals potentially would need to retain frail elderly patients longer due to difficulty in arranging safe and appropriate discharge and transfer to a nursing home setting. Not only would this be an inappropriate use of what is often a limited supply of hospital beds, but the cost of unnecessary hospitalization would be an undue burden on an already strained healthcare system. In addition, discharges to settings other than nursing homes where the level of post-acute care provided is insufficient to meet the patients' health needs could result in re-admissions to hospitals due to co-morbidities or additional complications from inadequate care. Potentially these unnecessary hospital stays would be at the expense of the State Medicaid and federal Medicare programs.

Moreover, under the Public Health Code provisions governing licensure of nursing homes in Michigan, a nursing home may not readily discharge or transfer a nursing home patient. MCL 333.21773 and 333.21774; 1979 AACS R 325.20116. Even in instances of nonpayment, the nursing home is obligated by law to provide certain due process to the patient and retain that patient in the facility regardless of lack

of payment until at least 21-days notice has been provided and the facility has made appropriate discharge or transfer arrangements for that individual. *See* MCL 333.21773. However, in cases of nonpayment, it is often difficult to find another facility that is willing to accept a nonpaying resident, and until such discharge or transfer occurs the nursing home will continue to provide the appropriate level of care and frequently absorb the associated costs. (Aff. ¶ 23.) Moreover, in a long term care setting like a nursing home, unreimbursed patient charges can continue to accumulate over extended periods of time given the long average lengths of stay at nursing home facilities. (Aff. ¶ 24.)

These problems are exacerbated by the chronic under-funding of nursing homes due to inadequate Medicaid reimbursement. A study issued April 2005 by BDO Seidman, LLP for the American Health Care Association, the national trade association representing nursing and long-term care facilities across the country, found that in 2002 the average shortfall in Medicaid reimbursement from the costs of providing services was $12.58 per Medicaid patient day nationally, and $10.98 per Medicaid patient day in Michigan. The BDO Seidman study also found that the daily reimbursement shortfall by Medicaid nationally increased by about 9% between 2001 and 2002, and that since 1999 cost increases to serving Medicaid patients nationally have exceeded Medicaid rate increases by 2%. (Aff. ¶ 25; *see also* Exhibit B to Affidavit, pp 1 and 5.) The BDO Seidman study further found that the total shortfall in Medicaid funding in Michigan for 2002 was approximately $111.9 million. (*See* Exhibit B to Affidavit, p 11). The Michigan Medicaid law requires a provider, such as a nursing home, to accept Medicaid payment as payment in full and prohibits a provider from balance billing a patient. Thus,

over the course of a year, the per day shortfall between actual costs of care and available Medicaid reimbursement equals thousands of dollars for MAHSA Member Facilities.

The Rulings in this case concern MAHSA and its members because they are contrary to the Legislature's express and implied policy decision, as expressed through the statutes' words, to encourage healthcare activities that lessen the government's burden or that benefit the public's health. The additional requirements imposed by the Rulings may make the vast majority of nonprofit healthcare providers ineligible for the exemptions. The Rulings also are inconsistent with several longstanding decisions of this Court that have granted or affirmed exemptions as charitable institutions and/or for public health purposes under almost identical circumstances to the case at bar. The evisceration of the exemptions that results from the Rulings would divert precious healthcare dollars that otherwise would be used by the organizations such as MAHSA to support, maintain or further charitable purposes and public healthcare services.

STATEMENT OF JURISDICTION

MAHSA adopts Wexford's Statement of Jurisdiction.

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

MAHSA adopts Wexford's Statement of Material Facts and Proceedings.

SUMMARY OF ARGUMENT

The people of Michigan have mandated the level of importance to be accorded their public health and welfare by declaring in their Constitution: "The public health and general welfare of the people of the state are hereby declared to be matters of **primary** public concern." Const 1963, art 4, § 51 (emphasis added). They also commanded that the Legislature "pass suitable laws for the protection and promotion of the public health." *Id.*

Consistent with its constitutional duty, and also recognizing the government's limited ability to provide for and protect the health of millions of Michigan citizens, the Legislature has found it prudent public policy to provide tax relief to encourage nonprofit organizations in the private sector to shoulder some of the State's enormous responsibility of meeting the healthcare needs of its citizenry. Although various formulations have existed since the late 1800's, the Legislature's most significant encouragements include two exemptions from real and personal property taxes under the General Property Tax Act: (1) the charitable institution exemption found in Sections 7o and 9(a) (MCL 211.7o (real property) and MCL 211.9(a) (personal property)); and (2) the public health purposes exemption found in Section 7r (MCL 211.7r). The tax relief afforded by these exemptions encourages eligible organizations to utilize funds that otherwise would be expended on tax payments to the benefit of the public.

Recognizing the Legislature's intention to promote actions that grant healthcare benefits to the public and thereby lessen the government's burden, this Court has held on at least five occasions and for over 100 years that the charitable institution exemption found in Section 7o of the General Property Tax Act is available to nonprofit

healthcare providers even if they receive some compensation or government reimbursement. In so ruling, the Court has recognized that the hallmark of a charitable institution deserving of an exemption from property taxation is not whether it receives full or partial payment for its services or whether it runs its operations at a surplus or deficit, but rather whether the organization is nonprofit, provides its services without discrimination, and uses any financial surplus to continue its services rather than for personal gain. Such rulings further acknowledge that some form of payment generally is essential to sustain beneficial services to the public over long periods of time and reflect the reality that without the ability to recoup some costs, most charitable organizations, particularly those that provide expensive health-related services, quickly would be forced to curtail beneficial services or to close their doors entirely. MAHSA members are no exception to these economic realities.

Similar to the charitable institution exemption, the Legislature also has not adopted any language requiring a facility to provide free services in order to qualify for Section 7r's public health exemption; nor has the Legislature precluded a nonprofit organization from qualifying for the public health exemption merely because it receives compensation for the services provided. In fact, the public health purposes exemption under Section 7r of the General Property Tax Act, MCL 211.7r, does not include as one of its eligibility criteria for exemption any charitable purpose or the obligation to provide free care. To the contrary, the only limitation remotely relating to finances or compensation under Section 7r is that the entity must be a "nonprofit trust," which this Court previously has held includes a nonprofit corporation. In other words, all financial surplus must be applied to further the organization's nonprofit operations and corporate

purposes and not paid out to individuals or entities as profit for private gain. Likewise, there is no requirement in Section 7r that the taxpayer be required to prove it is "atypical" or wholly unlike any other healthcare provider, entity or facility. Indeed, such limiting criteria would be contrary to the Legislature's intention of encouraging actions that benefit the public. In fact, the only criteria to qualify for the public health purposes exemption in Section 7r of the General Property Tax Act are that the entity be a nonprofit organization and that the entity uses its property for public health purposes.

The Rulings in this case are erroneous because they are contrary to the Legislature's express and implied policy decision, as expressed through the statutes' words, to encourage healthcare activities that lessen the government's burden or that benefit the public's health. Indeed, the Rulings' additional requirements (such as a prohibition on compensation, threshold free care or charity level requirements, and providing unique services) make it virtually impossible for the vast majority of nonprofit healthcare providers to quality for the exemptions, thereby rendering the statutory exemptions meaningless and hollow. The Rulings also are inconsistent with several longstanding decisions of this Court that have granted or affirmed exemptions as charitable institutions and/or public health purposes under almost identical circumstances to the case at bar.

The effect of the Rulings' additional requirements is that nonprofit healthcare providers may be denied the benefits of the charitable institution and public health property tax exemptions granted by the Legislature. The consequential effect is that nonprofit healthcare organizations have fewer dollars available to support or provide a broad range of critical services to vulnerable populations, thus placing additional

pressure on an already strained and fragile healthcare delivery system and substantially increasing the government's burden on meeting its constitutional imperative to protect and enhance the public's health and welfare.

MAHSA's members and other nonprofit healthcare organizations that provide essential healthcare services to the state's most vulnerable populations -- the elderly and disabled -- are an important component of the total healthcare system serving the public's health. In fact, MAHSA's members annually provide approximately 7.9 million days of patient care to Michigan's elderly and disabled. (Aff. ¶ 5.)

The legislatively created charitable institution and public health exemptions act as a societal safety net for this fragile healthcare system. When nonprofit organizations are able to avail themselves of the exemptions, Michigan's most vulnerable populations have access to quality healthcare services. If the exemptions are eviscerated and there is little incentive for providing such public health and charitable healthcare services, the State will shoulder a greater burden in meeting its citizens' healthcare needs at a time when it can least afford it when the costs for healthcare are rising exponentially, when other sources or the sufficiency of reimbursement for such care are declining, and when the population of the State is graying.

At the day's end, it is the government and not the nonprofit organizations that bear the constitutional duty to preserve and protect the health and welfare of millions of Michigan citizens. Thus, when vital healthcare services are cut and Medicaid and Medicare patients are turned away, causing such patients to require more acute care and more expensive services from other healthcare providers, it will be the government

that is obligated to respond to the resulting healthcare crisis—at a phenomenal cost and an extraordinary administrative burden. The Legislature could not have intended this when it created these exemptions.

MAHSA respectfully requests that the Court issue an opinion and judgment that reverses the opinions issued by the Michigan Tax Tribunal and Court of Appeals and grants Petitioner-Appellant Wexford Medical Group ("Wexford") the property tax exemptions under General Property Tax Act Sections 7o(1), 9(a) and 7r. MAHSA also respectfully requests that the Court confirm the eligibility of similarly situated nonprofit healthcare providers like MAHSA's Member Facilities for such exemptions, or at least with respect to MAHSA members, materially limit the scope of the Rulings to avoid unintended but catastrophic consequences for a wide variety of other nonprofit organizations like the MAHSA members, that advance the health and public welfare of the citizens of the State of Michigan by serving millions of aging and disabled individuals each year.

ARGUMENT

I. THE RULINGS MUST BE REVERSED BECAUSE THEY CONFLICT WITH THE PLAIN LANGUAGE OF SECTIONS 7o AND 9(a) OF THE GENERAL PROPERTY TAX ACT AS WELL AS FIVE DECISIONS OF THIS COURT THAT GRANT THE CHARITABLE INSTITUTION EXEMPTION ON NEARLY IDENTICAL FACTS.

A. Standard Of Review

MAHSA agrees with Wexford that this issue presents a question of statutory interpretation and law, which is reviewed by this Court *de novo*. *Yaldo v North Pointe Ins Co,* 457 Mich 341, 344; 578 NW2d 274 (1998).

B. Nonprofit Healthcare Organizations Like Wexford And MAHSA Members Are Entitled To The Charitable Institution Exemption Because They Provide Services That Benefit The General Public Without Restriction And They Otherwise Lessen The Government's Burdens

1. The Michigan Constitution Grants The Legislature The Exclusive Power To Tax And Grant Exemptions.

The Michigan Constitution requires the Legislature to "provide for the uniform general ad valorem taxation of real and tangible personal property" in the state which is not otherwise exempt by law. Const 1963, art 9, § 3. The power to tax is vested exclusively with the Legislature. *Lucking v People*, 320 Mich 495, 504; 31 NW2d 707 (1948). The Legislature's exclusive tax levying power includes the power to exempt property from taxation. *Id.*[2]

[2] Local units of government derive their powers to tax from the Legislature, and such power to impose taxes cannot be exercised except pursuant to express statutory authority. *City of Berkley v Royal Oak Twp*, 320 Mich 597, 601; 31 NW2d 825 (1948).

2. The Legislature Has A Longstanding Tradition Of Exempting Charitable Institutions From Taxation, Including Exemptions Available In Sections 7o And 9(a) Of The General Property Tax Act.

Since at least 1893, when the General Property Tax Act was enacted, the Legislature has exempted from taxation those entities that qualify as a "charitable institution." The current formulation of the charitable institution exemption is found in Sections 7o and 9a of the General Property Tax Act. Section 7o states in pertinent part:

> [P]roperty owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act.

MCL 211.7o. Likewise, Section 9(a) of the General Property Tax Act exempts from taxation "[t]he personal property of charitable, educational, and scientific institutions." MCL 211.9(a).

3. Because The General Property Tax Act Does Not Define The Term "Charitable Institution" This Court Has Previously Determined That An Organization Is "Charitable" Where It Is Nonprofit, It Extends Its Benefits Without Discrimination, And For Purposes Of This Case, It Relieves Bodies From Disease, Suffering Or Constraint, Or Otherwise Lessens The Government's Burdens.

The General Property Tax Act does not define the term "charitable institution." Instead, and for at least 65 years, decisions of this Court have characterized an organization as a "charitable institution" for tax exemption purposes if it was nonprofit, promoted the public's general welfare, and extended its benefit without discrimination. As this Court has stated:

> The generally accepted rule as to exemption from taxation of charitable corporations is stated [in the American Law Reports]: "The determination of the exemption in a particular case seems to depend, in the last

> analysis, upon two things: First, whether the organization claiming the exemption is a charitable one; and second, whether the property on which the exemption is claimed is being devoted to charitable purposes. In general, it may be said that any body not organized for profit, which has for its purpose the promotion of the general welfare of the public, extending its benefits without discrimination as to race, color, or creed, is a charitable or benevolent organization within the meaning of the tax exemption statutes."

Gundry v RB Smith Memorial Hospital Ass'n, 293 Mich 36, 38-39; 291 NW 213 (1940). *See also Michigan Baptist Homes & Development Co v Ann Arbor*, 396 Mich 660, 671; 242 NW2d 749 (1976) (this Court citing *Gundry* and holding that an organization qualifies for a charitable or benevolent tax exemption if it uses its property to "benefit the general public without restriction.") In addition, for over 23 years, this Court has defined the term "charity" in property tax exemption cases specifically to include relieving bodies from disease, suffering, or constraint, stating:

> [C]harity . . . [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Retirement Homes of the Detroit Annual Conference of the United Methodist Church Inc v Sullivan Twp, 416 Mich 340, 348-49; 330 NW2d 682 (1982) (citations omitted).

Thus, under this Court's definitions of "charitable institution," organizations such as Wexford and MAHSA's member entities qualify for the charitable institution exemption.

C. The Rulings Must Be Reversed Because (1) They Conflict With The Plain Language Of Sections 7o And 9(a) Of The General Property Tax Act; and (2) They Fail To Acknowledge That, For Over 100 Years, This Court Has Granted Exemptions To Nonprofit Organizations Even When Compensation Or Reimbursement Is Received.

The Court of Appeals decision affirming the Tax Tribunal is erroroneous and must be reversed because it both conflicts with the plain language of the General Property Tax Act and ignores pertinent authority of this Court. In ruling that Wexford did not qualify as a charitable institution, the Court of Appeals stated:

> Further, the Tax Tribunal did not err in concluding that Wexford's financial losses from maintaining an open-door policy and accepting an unlimited number of Medicare and Medicaid patients did not render it a charitable institution. **The services provided to the patients was not charity. Rather, they were performed in exchange for payment from the governmental programs.** That the amount of payment under these programs often does not cover the cost of providing the service does not change the character of the service from service in exchange for payment to charity. Further it is undisputed that Wexford's aim is to become profitable.

Wexford Medical Group v City of Cadillac, unpublished opinion per curiam of the Court of Appeals, decided August 24, 2004 (Docket No. 250197), *available at* 2004 WL 1882645, at *2 (emphasis added). The Court of Appeals also stated that "[w]hile Wexford's presence in the community is laudable, as is the presence of other healthcare professionals, the services were, nevertheless, with the exception of 13 patients, performed in exchange for compensation." *Id.* The Rulings thus implicitly hold that charity exists only when the service provided is absolutely uncompensated.

This holding is error. No language in Sections 7o and 9(a) of the General Property Tax Act denies the charitable institution property tax exemption to nonprofit organizations that receive some compensation or reimbursement for services

performed. "Whether one agrees with such policy decisions, those decisions are solely within the Legislature's authority to make. This Court may not question the wisdom of the Legislature's policy choices; rather, this Court must enforce the statutory language as written." *Shinholster v Annapolis Hosp*, 471 Mich 540, 592; 685 NW2d 275 (2004).

The Rulings also ignore 100 years of established law, as expressed in five separate decisions of this Court, holding an organization is "charitable" even if it charges fees in exchange for its services. As this Court consistently has ruled, the hallmark of a charitable institution is not whether an organization receives all or some payment for its services or whether it runs its operations at a surplus or deficit; rather, the hallmark of a charitable institution is that it is nonprofit and uses surplus for continued public good rather than private gains. In the 1904 case of *Michigan Sanitarium & Benevolent Ass'n v Battle Creek*, 138 Mich 676; 101 NW 855 (1904), for example, this Court held that a sanitarium was charitable and exempt from property taxes where it provided care and relief to indigent or other sick and infirm persons; it treated some patients for free, some at reduced fees and others at full price; the sanitarium would have generated more money if all of its patients had paid the full price; none of the funds paid to the sanitarium went to private parties as dividends; and all funds were used to maintain and improve the facilities or to pay wages. *Id.* at 680-682. Even though the majority of patients paid the regular fixed rate, this Court determined that "a corporation is sufficiently charitable to entitle it to the privileges of the act when the charges collected for services are not more than are needed for its successful maintenance." *Id.* at 683.

Likewise, in the 1940 *Gundry* case, the petitioner sought a property tax exemption for real property owned by a nonprofit hospital association. *Gundry, supra* at 37-39. The petitioner argued it was exempt from taxation as a charitable institution where patients who were financially able paid the full rate charged, indigent persons were treated at less than cost, any surplus amounts were used to improve the hospital, and no dividends were paid to, or expected by, the members of the hospital association. In holding that the hospital qualified as a charitable institution, this Court cited approvingly the ALR's statement that "the fact that a charge is made for benefits conferred, against those who are able to pay, in no way detracts from the charitable nature of an organization." *Id.* at 39, citing 34 ALR at 635. The Court also found significant the trial court's determination that, even though most of the patients paid full rates, "the charges collected from patients were not larger than were necessary to the successful maintenance of the institution" and "[n]o one ever received a dollar from dividends." *Id.* at 40. In holding that the petitioner qualified for the tax exemption as a charitable institution, this Court confirmed that the critical facts were that the hospital "is maintained without gain, profit or advantage to anyone." It concluded, "[i]t does not lose its charitable character even though in some years, instead of the usual deficit, it shows a small surplus which is used to supply needed equipment." *Id.* at 41.

In 1958, in considering whether an ecclesiastical organization's property was tax exempt where the property was used for Bible study, recreation, and for evangelistic addresses, this Court again held that it was "inescapable" that the organization was charitable because the organization had no stockholders, paid only modest salaries to necessary employees, and offered no pecuniary benefit to any individuals. *Gull Lake*

Bible Conference Ass'n v Ross Twp, 351 Mich 269, 274; 88 NW2d 264 (1958). Eight years later, in *Oakwood Hosp Corp v Michigan State Tax Comm*, 374 Mich 524, 531-32; 132 NW2d 634 (1965), this Court determined that the petitioner qualified for a charitable institution exemption even though it charged for its services. In 1985, this Court again explained that "a nonprofit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as the charges approximate the costs of the services." *See Retirement Homes, supra,* at 350, n 15 (*Retirement Homes* involved a non-profit, non-stock corporation that operated a nursing home and a home for the aged.)[3]

Similar to the facts in *Battle Creek*, *Gundry*, *Gull Lake*, *Oakwood*, and *Retirement Homes,* financially able persons pay Wexford the regular fixed rate. This is true for virtually all other nonprofit medical providers[4] and it also is true for MAHSA members. It is precisely this fiscally responsible model that allows nonprofit organizations like Wexford and MAHSA members to provide expensive services to a vulnerable population for sustained periods of time at a reduced or free rate. Without the ability to

[3] Following these precedents, a number of Court of Appeals decisions recognized that an organization may qualify for the charitable institution exemption even if it receives compensation for its services. In *Huron Residential Services For Youth Inc v Pittsfield Charter Township*, 152 Mich App 54; 393 NW2d 568 (1986), the Court of Appeals reversed the Tribunal and exempted, as charitable, a nonprofit institution's property used for providing care and treatment for troubled youths. The State of Michigan paid the petitioner virtually all of its costs for the services it rendered. The Court of Appeals ruled that the proper focus in determining the charitable nature of a service is whether there is a gift for the benefit of the general public or a lessening of a burden of government and the charges approximate the cost of services. *Id.* at 63. In *Kalamazoo Aviation History Museum v Kalamazoo*, 131 Mich App 709, 716 fn 3; 346 NW2d 862 (1984), the Court stated that "Petitioner is not disqualified from receiving a charitable exemption because it charges a fee which pays a fraction of its operating costs."

[4] *See* March 18, 2005 Brief of Michigan Health & Hospital Association As Amicus Curiae In Support of Petitioners-Appellants, p 16.

recoup some of their costs, either through modest governmental reimbursement, partial payment, or from financially able persons, most organizations engaged in health-related services would be forced out of business. Even with the limited ability to recoup some costs, providers like Wexford and MAHSA members may face annual losses in the millions of dollars. Such losses would be exacerbated without some form of reimbursement. MAHSA doubts most nonprofit organizations could continue to operate if forced to incur even greater multi-million dollar losses year after year.

As this Court correctly recognized in *Battle Creek*, *Gundry*, *Gull Lake*, *Oakwood*, and *Retirement Homes*, a charitable organization does not distinguish itself by the fees it does or does not charge; instead it distinguishes itself by how it uses any surplus money earned. In this case, Wexford and MAHSA members are non-profit, non-stock membership corporations; they pay modest salaries to essential employees, and they operate without gain, profit or advantage to any person. (Aff. ¶¶ 3, 7 and 19). Any financial surplus is infused back into the organization in support of its ongoing charitable mission and operations. This is the critical distinction between for-profit organizations and nonprofit organizations. MAHSA members, for example, use any financial surplus generated to sustain or improve facilities and equipment and to increase the number of patient care hours by staff to enhance the quality of care for patients. (Aff. ¶¶ 3, 7 and 19). A result is that patients at a nonprofit MAHSA Member Facilities generally receive more patient care hours per day than patients at for-profit facilities. (Aff. ¶ 17; *see also* Exhibit A to Affidavit.)

Accordingly, because no statutory language disqualifies a nonprofit organization from the charitable institution exemption merely because it receives some

compensation for services, and because 100 years of this Court's jurisprudence expressly approve of charitable institution exemptions for entities that receive some compensation, the Rulings must be reversed.

D. The Rulings Must Be Reversed Because They Impose Requirements, Including Financial And Quantity Thresholds, Beyond Those Expressed by the Legislature In The Statute's Language.

The Court of Appeals decision affirming the Tax Tribunal must be reversed for the additional reason that it invades the province of the Legislature, by inventing property tax exemption qualifications where none are expressed in the statutes. The Court of Appeals held that the Tribunal properly concluded that Wexford is not charitable because it served 13 patients over 2 years under its charity care program even though it has an annual operating budget of $10 million. *Wexford Medical Group, supra*, 2004 WL 1882645, at *1. The Court also stated that "[w]hile Wexford's presence in the community is laudable, as is the presence of other healthcare professionals, the services were, nevertheless, with the exception of 13 patients, performed in exchange for compensation." *Id.* In so holding, the Rulings improperly impose requirements beyond those appearing in the statute's language. Moreover, even if such unexpressed threshold requirements were appropriate, the Rulings would be erroneous for failing to acknowledge the significant amount of charity that Wexford and other healthcare providers give when they accept Medicaid patients at under-reimbursed rates and commit to provide services to all regardless of the availability or sufficiency of reimbursement to the extent of their financial ability to do so.

1. The Rulings Fail To Acknowledge That The Plain Language In Sections 7o And 9(a) Contains No Threshold Requirements.

The Rulings err because the statutes' plain language contains no requirement that a certain amount of charity be performed in order for an organization to qualify as a charitable institution. This Court must enforce the statutory language as written. *Shinholster*, *supra* at 592.

2. The Rulings Fail To Acknowledge The Significant Amount Of Charity That Wexford And Other Nonprofit Healthcare Providers Give When They Accept Medicaid Patients.

The Rulings also err because, even assuming the Legislature had created thresholds as a condition to qualify for charitable exemption, the Rulings do not properly quantify the amount of charity provided by Wexford and other nonprofit healthcare providers. The Rulings focus solely on the free care that Wexford provided under its charity care policy. They fail to consider the amount of additional charity that Wexford and other nonprofit healthcare providers give when they accept Medicaid patients for whom the government's reimbursement rate is less than the actual cost of care or the charity extended by such nonprofit healthcare entities' provision of wholly unreimbursed care to indigent patients during the time that such individuals are seeking to qualify for Medicaid eligibility. This failure of the Rulings was erroneous because, as discussed above, services are considered charitable where they are partially reimbursed. As such, assuming threshold requirements exist (which they do not), the Rulings do not properly quantify the amount of charity provided by Wexford and other nonprofit healthcare providers.

3. Even If Authorized, Financial And Quantity Thresholds To Qualify For The Charitable Exemption Would Be Unfair To Taxpayers And Unreliable And Unworkable For Taxing Authorities.

The Court of Appeals' attempt to impose threshold requirements on the level of charity that must be provided before an entity can avail itself of the charitable institution property tax exemption is not only unauthorized. It is also short-sighted, unfair, and unworkable and will lead to wildly inconsistent results. Imposing threshold requirements as the Tax Tribunal and Court of Appeals have done in this case disregards numerous facts about charitable entities and the nature of the provision of charitable medical care. These facts include: (i) the entity often cannot readily identify or predict all persons who need or desire its services or benefits; nor can the entity force those it identifies to avail themselves of the benefits; (ii) a uniform - and fair - threshold would be nearly impossible to establish due to the entities' varying natures and services; (iii) the value of the charitable benefit is not always best expressed through quantity but may involve qualitative judgments; and (iv) the entity needs flexibility in order to determine how to best maintain its services.

a. A Charitable Entity Often Cannot Readily Identify Or Predict All Persons Who Need Or Desire Its Services. Those It Identifies Cannot Be Forced To Take Advantage Of The Offered Benefits And Services.

It makes little sense to impose threshold requirements because a charitable entity often cannot readily identify or predict those persons who will avail themselves of the proffered benefit or services. Likewise, to the extent potential beneficiaries can be identified, a charitable entity cannot force individuals to use its services and benefits. For example, even though Wexford encourages indigent patients to use its charity care program, some qualifying individuals choose not to participate in the program because

they desire to avoid a perceived "charity" stigma. (Petitioner-Appellant's App at 68a-69a and 95a). At best, the charitable entity can make the benefit available without discrimination as to race, national origin, handicap, gender, creed, or in the case of MAHSA Member Facilities, whether the expected amount of Medicaid reimbursement may cover the actual cost of providing care to that individual.

b. A Uniform—Yet Fair—Threshold Would Be Nearly Impossible To Establish Due To The Charities' Varying Natures And Services.

Because of the varying natures of charitable institutions and the services they provide, a threshold requirement not only makes little sense, but would be nearly impossible to impose fairly. For example, significant operational differences exist between aviation museums, bible camps, medical clinics, and facilities that provide 24-hour medical and physiological care, yet, all potentially are eligible for the charitable institution exemption. There is variation in the amount and number of services physically capable of being offered and also variation in the cost of providing those services. While an aviation museum might serve a million persons a year, it might only provide hundreds of thousands of dollars in charity. Conversely, a single 24-hour live-in facility like a skilled nursing home might provide services to only hundreds of persons per year, but the cost of those services could be millions of dollars. For these reasons it would be difficult to establish uniform one-size-fits-all threshold levels for the charitable institution exemption.

c. The Rulings Err In Imposing A Quantity Threshold Because Quantity Does Not Always Accurately Measure The Charity's True Value.

The Rulings' imposition of a dollar or usage threshold is problematic for the additional reason that quantity requirements do not necessarily reflect the value of the benefit provided. Instead, qualitative judgments may be required.

For example, although a person can donate a heart only a single time, such is generally thought of as a meaningful and charitable gift that society should encourage. Likewise, although Wexford treated "only" 13 patients for free, the treatment was meaningful to those 13 persons, and those 13 persons are better off because they received treatment. The local hospital is better off because those 13 people did not have to wait until they reached a critical care stage and were forced to be treated by the local hospital with expensive services. Moreover, the State of Michigan likely is better off because 13 of its citizens received immediate and adequate care. Thus, although the charity occurred "only" 13 times, valuable benefits were incurred.

d. Charitable Institutions Need Flexibility To Respond To Changing Conditions.

A charitable institution's ability to provide charity depends upon the relationship at any given time between the demand for its charitable services and the extent of its resources. If forced to respond to unlimited demand or some predetermined threshold, the charitable system could collapse. Most organizations will have periods of deficit and periods of surplus. Such organizations need flexibility to respond to changing conditions and to manage their operations in a way that allows the benefits to be sustained over time. Moreover, imposing threshold levels reduces the likelihood that

start-up institutions would be eligible for the exemptions at the time when they are needed the most.

E. The Rulings Must Be Reversed Because They Fail To Recognize The Unique Nature Of Nonprofit Organizations And The Significant Ways They Lessen The Government's Burden.

For over 23 years, this Court has held that an organization is "charitable" where it relieves bodies from disease, suffering or constraint, or it lessens the government's burdens. *Retirement Homes*, *supra* at 348-49. The Rulings are flawed because they fail to acknowledge this authority and contain no analysis of the significant way in which nonprofit healthcare providers relieve disease and suffering, or lessen the government's burdens by accepting Medicare and Medicaid patients.

1. Wexford And MAHSA Members Relieve Disease And Suffering By Virtue Of The Fact That They Provide Numerous Healthcare Services.

Because it is a healthcare provider, it is undisputed that Wexford provides treatment and services to relieve patients' bodies from disease and suffering. MAHSA members are no different because they too are healthcare providers and extend a number of services aimed at alleviating sickness, disease, and suffering. MAHSA Member Facilities provide vital services to the frail elderly in Michigan that restore, maintain, and protect the health of this sector of the vulnerable population, including bathing; skin care; routine healthcare; bladder irrigation or bowel training; impaction removal; observing and recording vital signs; catherization; feeding assistance; tube feeding; ambulation assistance; oxygen therapy; ulcer treatment; injections; colostomy; ureterostomy or iseostomy care; tracheotomy care; tracheal suctioning; respiratory care; dressings and wound care; dementia care and services to individuals at various stages of Alzheimer's disease; nutrition and physical, occupational, speech and recreational

therapy; and a sophisticated pharmaceutical regimen. (Aff. ¶¶ 10 and 11.) With the exception of one Member Facility that is dedicated solely to caring for Catholic nuns, the Member Facilities are open without regard to race, national origin, handicap, gender, creed, the basis of disability, and whether the expected amount of Medicaid reimbursement may cover the actual cost of providing care to that individual. (Aff. ¶ 12.)

2. Wexford And MAHSA Members Lessen The Government's Burden By Accepting Medicaid Patients.

Wexford and MAHSA members[5] provide services to Medicaid patients. Although both groups charge a fee for their services, the Medicaid program's limited reimbursement often does not cover the actual costs of care, particularly in the case of long-term care such as the services furnished by MAHSA Member Facilities. MAHSA Member Facilities also often are uncompensated for patient care provided after a facility resident has depleted his resources but prior to qualifying for Medicaid eligibility. Despite insufficient payment, or in may instances nonpayment, Wexford and MAHSA members continue to provide Medicaid healthcare services because of their missions to ensure that vulnerable populations have access to quality healthcare and to provide care to all regardless of the sufficiency of payment to the extent of their financial abilities.

Moreover, it is a well known fact that healthcare costs continue to absorb more of the U.S. gross domestic product each year. At the same time, it also is widely recognized that there is an increase in the number of persons requiring long-term nursing care and assisted living services because of the aging population. Likewise, because a large portion of the State's budget is dedicated to providing healthcare to its

[5] Only one Member Facility is restricted to private pay patients. (Aff. ¶13.)

citizens and the State has a weak economy, there has been increased pressure on the availability of State Medicaid funds. In 2005, for example, Medicaid funds were reduced across the board by 4%. (*See* **Attachment 2**.) Thus, providers have no assurance that the current reimbursement levels, which are inadequate to cover the actual costs, will not be further reduced.

Without nonprofit healthcare providers like Wexford and MAHSA members, it would be substantially more difficult and costly for the State to meet its constitutional obligation of caring for these patients. Wexford and MAHSA members are thus charitable because they lessen the State's burden of providing healthcare to some of its most vulnerable residents, particularly in rural areas where access to quality long-term care and post-acute hospital services would be difficult without the availability of MAHSA Member Facilities and MAHSA member services.

II. THE RULINGS MUST BE REVERSED BECAUSE THEY CONFLICT WITH THE PLAIN LANGUAGE OF SECTION 7r OF THE GENERAL PROPERTY TAX ACT AND WITH THE *ROSE HILL* DECISION INTERPRETING PUBLIC HEALTH PURPOSES TO MEAN PROTECTING AND IMPROVING COMMUNITY HEALTH BY MEANS OF PREVENTATIVE MEDICINE, HEALTH EDUCATION, COMMUNICABLE DISEASE CONTROL, AND THE APPLICATION OF SOCIAL AND SANITARY SCIENCES.

A. Standard of Review

MAHSA agrees with Wexford that this issue presents a question of statutory interpretation and law, which is reviewed by this Court *de novo*. *Yaldo, supra,* 457 Mich at 344.

B. The Rulings Denying Wexford The Public Health Purposes Exemption Must Be Reversed Because They Conflict With Section 7r's Plain Language.

The Rulings erroneously held that the exemption under MCL 211.7r, the public health exemption, is not available to Wexford or other nonprofit healthcare providers

that accept payment or governmental reimbursement in exchange for the services they render. *Wexford Medical Group, supra*, 2004 WL 1882645, at *2. In so holding, the Tribunal and Court of Appeals determined that the acceptance of payment for services made Wexford indistinguishable from "a fairly typical medical practice" and that granting the exemption effectively would grant exemption to every medical office in the state. This holding and rationale are erroneous because they are contrary to the Section 7r's plain language and because they impose threshold charitable care requirements for the public health exemption where the Legislature did not do so.

1. The Rulings Are Contrary To Section 7r's Plain Language Because The Statute Contains No Requirement That Services Be "Free" For A Taxpayer To Qualify For The Public Health Exemption.

Under the plain language of Section 7r, the public health exemption is not limited to charitable institutions. Section 7r of Michigan's General Property Tax Act grants tax exemption for property used for public health purposes and provides in pertinent part:

> The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and used for hospital or public health purposes is exempt from taxation under this act.

MCL 211.7r. The term "nonprofit trust" has been interpreted by this Court as including a nonprofit corporation. *Oakwood Hosp Corp v City of Dearborn*, 385 Mich 704, 708; 190 NW2d 105 (1971). There is no language in the statute that disqualifies healthcare providers from the exemption because they accept payment or governmental reimbursement in exchange for services. Indeed, the only limitation that remotely relates to finances or compensation is the requirement that the taxpayer be a "nonprofit trust." This means that any financial surplus generated must be applied to further the charitable operations and missions of the nonprofit organization and not paid out to

individuals or entities. (Aff. ¶ 16.) That is, the statute explicitly rewards organizations like Wexford and MAHSA members that forgo private gain. The Legislature has not chosen to impose a requirement that a facility provide free services or any other threshold level of charitable care to be eligible for the public health exemption. A court must not read into a statute provisions that the Legislature did not include. *Ford Motor Co v Unemployment Compensation Comm*, 316 Mich 468, 473; 25 NW2d 586 (1947).

2. The Rulings Are Contrary To Section 7r's Plain Language Because The Statute Contains No Requirement That Taxpayers Demonstrate They Are "Atypical" Or "Unique" To Qualify For The Public Health Exemption.

Contrary to the Rulings, Section 7r's plain language does not require the taxpayer to establish that it is "atypical" or unlike any other facility to qualify for the public health exemption. Nor does the statute limit the number of organizations eligible for the exemption. Instead, the statute requires the organization only to demonstrate that it meets three factors: (1) that the taxpayer is a nonprofit trust; (2) that it owns and occupies the real property; and (3) the taxpayer uses the property for "public health purposes." "The court is not at liberty to read into the statute provisions which the legislature did not see fit to incorporate." *Ford Motor*, *supra* at 473. Further, courts have "no power or authority to pass upon the wisdom, policy or equity of legislation." *Wojewoda v Employment Security Comm*, 357 Mich 374, 379; 98 NW2d 590 (1959). It also is entirely irrelevant that numerous taxpayers may be eligible for the exemption. In determining that local consent is required for a petroleum products pipeline that provides Michigan with one-third of its petroleum needs, this Court recently stated:

> We are aware, and, indeed, Wolverine forcefully argues, that this reading of the statute may facilitate frivolous and potentially crippling resistance from local governments along the route of a utility project. Such an argument, however, misunderstands the role of the courts. **Our task,**

> **under the Constitution, is the important, but yet limited, duty to read into and interpret what the Legislature has actually made the law. We have observed many times in the past that our Legislature is free to make policy choices that, especially in controversial matters, some observers will inevitably think unwise. This dispute over the wisdom of a law, however, cannot give warrant to a court to overrule the people's Legislature.**

City of Lansing v Michigan Public Service Comm, 470 Mich 154, 161; 680 NW2d 840 (2004) (citing *Oakland Co Rd Comm'rs v Michigan Property & Cas Guaranty Ass'n*, 456 Mich 590, 612-613; 575 NW2d 751 (1998)) (emphasis added).

C. The Rulings Denying Wexford The Public Health Purposes Exemption Must Be Reversed Because They Conflict With The *Rose Hill* Decision Holding That Section 7r Public Health Purposes Can Be Accomplished By Means of Preventative Medicine, Health Education, Communicable Disease Control, and the Application of the Social And Sanitary Sciences.

Because the General Property Tax Act does not define "public health purposes," Michigan courts may consult a dictionary for guidance as to the meaning of the term. *Rose Hill Center Inc v Holly Twp*, 224 Mich App 28, 33; 568 NW2d 332 (1997) (citing *Yaldo v North Pointe Ins Co*, 217 Mich App 617, 621; 552 NW2d 657 (1996)). In *Rose Hill*, the Court of Appeals adopted the following dictionary definition of "public health":

> [t]he art and science of protecting and improving community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences.

Rose Hill, supra at 33 (quoting *The American Heritage Dictionary (2d college ed)).*

In *Rose Hill,* the Court of Appeals held that a treatment facility for mentally ill adults was exempt from taxation under Section 7r because the facility was operated for public health purposes. *Id.* The Court of Appeals considered the following in reaching this decision: Rose Hill treated individual mentally ill patients (not the public at large) through evaluation, diagnosis, treatment (including prescription and dispensation of

medication), rehabilitation, and reintegration programs. Rose Hill employed psychiatrists, nurses, and social workers to provide 24-hour care to its patients. It was open to all adults without regard to race, religion, or sex, and it accepted payment from Medicare and Medicaid as well as third-party payors. (Aff. ¶¶ 12 and 13.)

The *Rose Hill* court did not deem the treatment of individual patients or the acceptance of Medicare or Medicaid payment for services as dispositive on the public health exemption issue. Furthermore, the *Rose Hill* petitioner was not required to demonstrate that it was atypical of other treatment facilities; rather it was required to demonstrate that its patient care activities fit within the plain meaning of "public health purposes." *Rose Hill, supra* at 34. In the present case, contrary to MCR 7.215(J)(1),[6] the Court of Appeals has ignored the *Rose Hill* precedent, erroneously stating that "the public health exemption under MCL 211.7r is not available for 'a fairly typical medical practice, where patients are expected to pay for medical care received, either through private or government insurance programs.'" *Wexford Medical Group, supra* 2004 WL 1882645, at *2, quoting *Pro Med Healthcare v Kalamazoo*, 249 Mich App 490, 500; 644 NW2d 47 (2002).

1. Wexford Is Entitled To The Public Health Exemption.

The Court of Appeals agreed with the Tax Tribunal's opinion that that the treatment of patients is inherent to the medical profession and, therefore, cannot be characterized as public health purposes. at *Wexford Medical Group v City of Cadillac,*

[6] MCR 7.215(J)(1) states: "A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule." No such reversal or modification of the *Rose Hill* decision has occurred.

unpublished opinion per curiam of the Court of Appeals, decided August 24, 2004 (Docket No. 250197), *available at* 2004 WL 1882645 at *2. This reasoning and conclusion are fundamentally flawed and contravene the decision of the Court of Appeals in *Rose Hill.* Just as Rose Hill protected and improved community health by providing 24-hour care to a particularly vulnerable segment of the community (the mentally ill); Wexford provides healthcare services, including preventative medicine and communicable disease control, to any patient in need of care. Moreover, under the Wexford court's reasoning, virtually no healthcare services would qualify as a public health services, and no facility that treats individual patients could qualify for exemption under Section 7r. Indeed, contrary to the Wexford's court's conclusion, the majority of public health activities involve treating individual members of the public. For example, mass immunizations involve immunizing individuals one-by one. Similarly, preventing the spread of contagious diseases or epidemics involves treating individual members of the public on a case-by-case basis. If the Wexford court's reasoning is allowed to stand, it would render the public health exemption meaningless.

2. In Addition To Wexford, Other Nonprofit Healthcare Providers Are Entitled To The Public Health Exemption.

MAHSA Member Facilities also protect and improve public health by providing 24-hour care to a particularly vulnerable segment of the public (the elderly, ill, and disabled) through preventative medicine, communicable disease control, health education, and the social and sanitary sciences. Indeed, the Michigan Legislature has recognized skilled nursing facilities such as the MAHSA Member Facilities as facilities providing public health services. They are licensed, regulated and monitored by the Michigan Department of Community Health under the Michigan Public Health Code,

1978 PA 368—an act the purpose of which is to "to protect and promote the public health" and to "regulate occupations, facilities . . . affecting the public health." Skilled nursing facilities also are recognized under the Public Health Code as a "hospital long-term care unit, nursing home, county medical care facility, or other nursing care facility . . .certified by the department to provide skilled nursing care." MCL 333.20109.

In addition to their statutory designation as public health providers, MAHSA Member Facilities also satisfy the plain meaning of "public health." Like the *Rose Hill* petitioner that provided 24-hour care to mentally ill adults, the Member Facilities provide 24-hour skilled nursing care to persons who are sick, infirm, and unable to care for themselves. Pursuant to the Public Health Code, services are provided under the direction of licensed personnel. MCL 333.21707, 333.21715, 333.21720, 333.21720a. The Member Facilities also provide a host of healthcare services that promote, improve, and preserve the health of thousands of elderly in Michigan, including bathing, skin care, routine health care, bladder irrigation or bowel training, impaction removal, observing and recording vital signs, catherization, feeding assistance, tube feeding, ambulation assistance, oxygen therapy, ulcer treatment, injections, colostomy, ureterostomy or iseostomy care, tracheotomy care, tracheal suctioning, respiratory care, dementia care and services to individuals at various stages of Alzheimer's disease, dressings and wound care, nutrition and physical, occupational therapy, and a sophisticated pharmaceutical regime. (Aff. ¶ 11.) Physicians' prescriptions for medications are ordered from a pharmacy and dispensed orally or by injection and intravenous therapy is administered by licensed personnel. (Aff. ¶ 11.) Most of the Member Facilities' patients are admitted from hospitals. (Aff. ¶ 20.) In today's

healthcare environment, Member Facilities provide the first level of post-acute care that traditionally was provided in hospitals. (Aff. ¶ 21.) Like *Rose Hill*, the Member Facilities are open to members of the general public without regard to race, religion, sex, or marital status[7]; and they accept patients covered by government insurance plans like Medicare and Medicaid, as well as private sources. *Rose Hill, supra* at 33. (Aff. ¶¶ 12 and 13.)

Finally, in addition to providing the public health services identified in *Rose Hill*, many Member Facilities and other MAHSA members also protect and improve community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences by providing community outreach education and immunizations to prevent epidemics and the spread of disease in the community and by making their facilities available for community outreach programs such as physical therapy.

Because the Tribunal's and Court of Appeal's decisions denying Wexford the public health purposes exemption are contrary to Section 7r's plain language and the *Rose Hill* decision, MAHSA respectfully requests this Court to reverse the Tribunal's and Court of Appeal's decisions. MAHSA further supports Wexford's request that the Court remand the case to the Tribunal for entry of an order granting Wexford's request for a property tax exemption under Section 7r.

[7] Only one Member Facility is dedicated solely to caring for Catholic nuns. (Aff. ¶13.)

CONCLUSION AND RELIEF REQUESTED

The Michigan Association of Homes and Services for the Aging ("MAHSA") respectfully requests that the Court issue an opinion and judgment that reverses the opinions issued by the Michigan Tax Tribunal and Court of Appeals and that grants Petitioner-Appellant Wexford Medical Group the property tax exemptions under General Property Tax Act Sections 7o(1), 9(a) and 7r. MAHSA also respectfully requests that the Court confirm the eligibility of similarly situated nonprofit healthcare providers like MAHSA's Member Facilities for such exemptions, or at least with respect to MAHSA members, materially limit the scope of the Rulings to avoid unintended but catastrophic consequences for a wide variety of other nonprofit organizations like the MAHSA members, that advance the health and public welfare of the citizens of the State of Michigan by serving millions of aging and disabled individuals each year.

Respectfully submitted,

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